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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (3)

Agriculture, Trade & Consumer Protection

1. Rules adopted creating ss. **ATCP 10.68** and **11.58**, relating to fish farms and imports of live fish and fish eggs.

Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

Fish Farms

Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.
- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.
- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:
 - *Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.
 - *Allows public fishing, for a fee, for fish hatched at that fish farm.
- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:
 - *Allows public fishing at the fish farm for a fee.
 - *Sells or trades fish, from the fish farm, to any person.
- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:
 - *Sell minnows to any person
 - *Sell fish or fish eggs to a type A registrant.
- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:
 - *The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.
 - *The fish farm consists solely of ponds used to hold or grow fish.
 - *The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

Registration Fees

This emergency rule establishes the following registration fees:

- Type A registration \$50.00
- Type B registration \$25.00
- Type C registration \$ 5.00
- Type D registration \$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.
- DNR informs DATCP that DNR has approved the facility.

Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.
- Violating the terms of the registration
- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.
- Physically assaulting a DATCP employee performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.
- Paying registration fees with a worthless check.

Fish ImportsImport Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.
- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

Publication Date: March 16, 1998

Effective Date: March 16, 1998

Expiration Date: See section 9104 (3xr) 1997 Wis. Act 27

Hearing Date: April 27, 1998

2. Rules adopted amending s. ATCP 75.015 (7)(c), relating to the retail food establishment license exemption for restaurant permit holders.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

Publication Date: July 1, 1998

Effective Date: July 1, 1998

Expiration Date: November 28, 1998

Hearing Date: November 11, 1998

3. Rules adopted amending ss. ATCP 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998

Effective Date: August 8, 1998

Expiration Date: January 4, 1999

Hearing Date: September 14, 1998

Extension Through: March 4, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund, Ch. ILHR 47)

Rules adopted revising ch. ILHR 47, relating to the petroleum environmental cleanup fund.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- A documented expansion of plume margin;
- A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;
- Soil contamination within bedrock or within 1 meter of bedrock;
- Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and
- Documented contamination discharges to a surface water or wetland.

Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled

or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: April 21, 1998
Effective Date: April 21, 1998
Expiration Date: September 18, 1998
Hearing Date: May 29, 1998
Extension Through: January 15, 1999

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50-64)

Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered multifamily housing as defined in s. 101.132 (1), Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132, Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

Publication Date: June 17, 1998
Effective Date: June 17, 1998
Expiration Date: November 14, 1998
Extension Through: January 12, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: June 30, 1998
Effective Date: June 30, 1998
Expiration Date: November 27, 1998
Hearing Date: August 14, 1998
Extension Through: January 25, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Barrier-Free Design, Ch. Comm 69)

Rule adopted creating **s. Comm 69.18 (2) (a) 2. c.**, relating to vertical access to press box facilities.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

Publication Date: May 15, 1998
Effective Date: May 15, 1998
Expiration Date: October 12, 1998
Hearing Date: August 31, 1998
Extension Through: February 8, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

Finding of Emergency

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998-99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

Publication Date: September 12, 1998

Effective Date: September 12, 1998

Expiration Date: February 9, 1999

Hearing Date: November 30, 1998

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Securities)

Rules adopted revising **chs. DFI-Sec 1 to 9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Finding of Emergency

The Department of Financial Institutions, Division of Securities, finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so-called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser," but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for "federal covered securities" and "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin). Comprehensive administrative rules are needed immediately to implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical permanent rules can be promulgated using the standard rule-making procedures.

Publication Date: July 7, 1998

Effective Date: July 9, 1998

Expiration Date: December 6, 1998

Hearing Date: September 24, 1998

Extension Through: February 4, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services

(Management, Technology & Finance,

Chs. HFS 1--)

(Health, Chs. HFS 110--)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated,

that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide

the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

EMERGENCY RULES NOW IN EFFECT

Health and Family Services

(Community Services, Chs. 30---)

Rule was adopted amending **s. HFS 94.24 (2)(e)**, relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the

Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another

person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: December 17, 1998
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (3)

Health and Family Services

(Health, Chs. HSS/HFS 110—)

1. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a \$1,000 deductible. Plan 2 has a \$500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of \$2,000 (which includes the \$1,000 deductible) per individual and \$4,000 per family for major medical and \$500 per individual for Medicare supplement. There is a lifetime limit of \$1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than \$20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk-Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the

program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance RiskSharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re-creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

- Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

- Deletion of a physician certification requirement in connection with applications of some persons for coverage;

- Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

- Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

- Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

- Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

- Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost-effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

- Continuation of an alternative plan of health insurance that has a \$2500 deductible (this was added by emergency order effective January 1, 1998);

- Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

- Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

Publication Date: July 1, 1998
Effective Date: July 1, 1998
Expiration Date: November 28, 1998
Hearing Date: September 29, 1998
Extension Through: January 26, 1999

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the

reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
- Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead-based paint activities.

Accreditation

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the

Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: August 29, 1998
Effective Date: August 29, 1998
Expiration Date: January 25, 1999
Hearing Dates: November 30, December 1, 7 & 9, 1998

3. Rules adopted revising **ch. HFS 124**, relating to designation of critical access hospitals.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

Publication Date: September 12, 1998
Effective Date: September 12, 1998
Expiration Date: February 9, 1999
Hearing Date: October 13, 1998

EMERGENCY RULES NOW IN EFFECT (5)

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

1. A rule was adopted revising **s. NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

Publication Date: December 15, 1997
Effective Date: April 1, 1998
Expiration Date: April 1, 1999
Hearing Date: January 12, 1998

2. Rules adopted revising **chs. NR 10 and 11**, relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

3. Rules were adopted revising **ch. NR 19**, relating to wildlife damage abatement and claims program.

Exemption From Finding of Emergency

Pursuant to s. 9137(1s)(b), 1997, Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

Publication Date: July 1, 1998
Effective Date: July 1, 1998
Expiration Date: November 28, 1998
Extension Through: January 26, 1999

4. Rules adopted revising **s. NR 20.03 (1)(k)**, relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998
Effective Date: June 27, 1998
Expiration Date: November 24, 1998
Hearing Date: July 24, 1998
Extension Through: January 22, 1999

5. Rules adopted revising **s. NR 10.01 (1)**, relating to the 1998 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 15, 1998

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection--Remediation, Chs. NR 700--)

Rules adopted creating **ch. NR 749**, relating to the assessment and collection of fees for providing assistance regarding

the remediation and redevelopment of contaminated lands.

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is that in order for the Department to facilitate the cleanup and redevelopment of many contaminated sites that could adversely affect public health, safety or welfare, fee revenue must be generated immediately in order to timely fill the program revenue positions which were authorized in the recent budget bill.

Finding of Emergency

Publication Date: September 19, 1998
Effective Date: September 19, 1998
Expiration Date: February 16, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Public Instruction

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998-99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996-97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999
Hearing Date: October 13, 1998

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998-99 school year. since the timelines would be too stringent to implement this grant program by

September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: October 20, 1998

3. Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules were adopted amending **s. PSC 4.30 (4) (a) and (5) (a) and (b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: July 17, 1998
Effective Date: July 17, 1998
Expiration Date: December 14, 1998

2. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public

Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: January 8, 1999

EMERGENCY RULES NOW IN EFFECT

Regulation & Licensing

Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: December 17, 1998
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant

such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

Publication Date: September 29, 1998
Effective Date: September 29, 1998
Expiration Date: February 26, 1999

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 328**, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 5, 1998

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts considering the emergency is:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures.

Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

Publication Date: October 12, 1998
Effective Date: October 12, 1998
Expiration Date: March 11, 1999
Hearing Date: December 11, 1998
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development **(Economic Support, Chs. DWD 11–59)**

1. Rules adopted renumbering ss. **HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services,

they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

***Architects, Landscape Architects,
Professional Geologists, Professional
Engineers, Designers and Land Surveyors
Examining Board
(Land Surveyors Section)***

Subject:

S. A–E 6.04 – Relating to educational requirements for registration.

Description of policy issues:*Objective of the rule:*

To clarify the educational requirements after June 30, 2000.

Policy analysis:

Section A–E 6.04 identifies the educational requirements for becoming a land surveyor. Section 443.06 (2) (am), Stats., provides that a bachelor's degree will be the educational requirement for registration after June 30, 2000. The requirement will increase the educational requirement from a two year degree to a four year college or university degree.

Statutory authority for the rule:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

***Architects, Landscape Architects,
Professional Geologists, Professional
Engineers, Designers and Land Surveyors
Examining Board
(Professional Engineers Section)***

Subject:

A–E Code – Relating to work experience for registration.

Description of policy issues:*Objective of the rule:*

To require that a candidate's work experience occur within the 15 years immediately preceding the date of submitting a complete application for registration.

Policy analysis:

The rules require applicants to meet an experience requirement for professional engineering registration. This section identifies a number of ways an applicant can meet this requirement, but it does not define the number of years within which the experience must have been obtained. The proposed rule amendment would require candidates to obtain the experience within 15 years preceding the date of application.

Statutory authority for the rule:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

***Architects, Landscape Architects,
Professional Geologists, Professional
Engineers, Designers and Land Surveyors
Examining Board
(Professional Geologists Section)***

Subject:

S. A–E 10.04 – Relating to educational requirements for licensure.

Description of policy issues:*Objective of the rule:*

To identify acceptable subject areas that meet the educational requirements for professional geologist licensure.

Policy analysis:

Section A–E 10.04 identifies the general educational requirements for licensure as a professional geologist. Requirements for licensure are 30 semester hours or 45 quarter hours of course credit. The rules would identify specific subject areas that are acceptable to the section.

Statutory authority for the rule:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

Commerce

Subject:

Chs. ILHR 4; Comm 7, 8 and 9; ILHR 10; Comm 11; ILHR 12; Comm 13, 14, 15, 16 and 18; ILHR 20–25; Comm 27; ILHR 28; Comm 34; ILHR 41–42; Comm 43, 45, 50–64, 66, 69, 70 and 75–79 —Relating to fire code requirements.

Description of policy issues:*Description of the objective of the rule:*

Update fire-related code requirements for buildings, structures and systems. Consider consolidation of such requirements into one state fire code. Consider the adoption of a national model fire code, with or without amendments.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, the fire code requirements of the Department are contained in numerous state codes, including but not limited to: chs. ILHR 4; Comm 7, 8 and 9; ILHR 10; Comm 11; ILHR 12; Comm 13, 14, 15, 16 and 18; ILHR 20–25; Comm 27; ILHR 28; Comm 34; ILHR 41–42; Comm 43, 45, 50–64, 66, 69, 70 and, 75–79. Many of these codes need updating to reflect current fire safety technology, and nationally recognized engineering principles and practices. The adoption of a national model fire code may allow for consolidation of many separate state codes. The alternative of not updating or consolidating the fire code requirements would result in a continuation of the present outdated, and in some cases, conflicting regulations.

Statutory authority for the rule:

Sections 101.02 (1), 101.02 (15), 101.14 (4), 101.63 (1) and 101.973, Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

Comparison of model codes to state codes	1600 hours
Code research, drafting, revisions	800 hours
Advisory code council meetings	800 hours
Environmental assessment	200 hours
Hearings, responses, revisions	<u>400 hours</u>
Total	3800 hours

Insurance, Commissioner of

Subject:

S. Ins 3.39 – Relating to the guaranteed issue and other revisions in the NAIC model Medicare supplement act and the Balanced Budget Act of 1997 (BBA).

Description of policy issues:

A statement of the objective of the proposed rule:

To consider changes to the Wisconsin Medicare supplement rules to expand guaranteed issue protections to persons who may have been omitted in the original NAIC model. In addition, the NAIC model may be corrected to fix mistakes and other omissions.

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The original NAIC model was drafted to adopt exactly the BBA provisions. States are permitted to extend further protections to Medicare beneficiaries. These changes would eliminate possible loopholes under which certain people may not have the right to guaranteed issue of another Medicare supplement policy.

Statutory authority for the rule:

Sections 628.34 (12), 628.38, 631.20 and 632.81, Stats.

An estimate of the amount of time that state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

200 hours.

Natural Resources (Environmental Protection--Water Supply, Chs. NR 800--)

Subject:

S. NR 812.05 – Relating to the injection of substances into drillholes.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

Should the injection of cement-based grouts with additives and chemical grouts for trench and building construction be subject to the injection prohibition and, if so, what manner of regulatory control should be applied? Those interested in this issue include environmentalists and people involved with the construction trades.

This action does not represent a change from past policy.

At present the Department is planning only to evaluate the contamination potential of the grouts and various options for regulating any that have this potential. Depending on which option is selected, the Department's choice could result in a change from past policy.

Statutory authority for the rule:

Section NR 812.05, Wis. Adm. Code and s. 281.17 (8), Stats., and s. 1421 the Underground Injection Control provision of the Federal Safe Drinking Water Act, 42 USC 300h.

Anticipated time commitment:

Hours indeterminable.

Regulation & Licensing

Subject:

S. RL 71.03 – Relating to reciprocal certification requirements.

Description of policy issues:

Objective of the rule:

To remedy the inconsistency between s. RL 71.03 as presently written and s. 451.08, Stats., both concerning requirements for reciprocal certification.

Policy analysis:

Section 451.08, Stats., provides for granting of a certification as an acupuncturist either if the applicant has practiced acupuncture in another state or territory for five years, or if the requirements met by the applicant for licensure in another state are substantially equivalent to the requirements for certification as an acupuncturist in Wisconsin. Section RL 71.03 omits language providing for certification for applicants who have five years of practice in another state. This inconsistency may be cured either by repeal of the rule, or by amendment.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board

Subject:

S. SFC 14.01 (2) – Relating to educational requirements for licensure.

Description of policy issues:

Objective of the rule:

To amend and clarify the academic equivalency requirements for licensure.

Policy analysis:

Section SFC 14.01 (2) identifies the educational requirements for equivalency of an academic program for purposes of licensure as a professional counselor. Requirements for licensure include successful completion of a counseling theory course. The amended rule would specify that the minimum number of 3 semester hours or 4 quarter hours are required for the counseling theory course.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

60 hours.

Transportation

Subject:

Ch. Trans 212 – Relating to standards for the inspection of bridges in Wisconsin.

Description of policy issues:

Description of the objective of the rule:

This rule-making will amend ch. Trans 212, relating to standards for the inspection of bridges in Wisconsin. The proposed rule-making will:

- Change the required maximum bridge inspection interval for state trunk highway bridges to be the same as that required by the federal government, which is two years for most classes of bridges;

- Update references to division names; and

- Change the required reporting date by local units of government of their inspection reports to allow more time for data entry to federal reporting system.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The Department has implemented a policy of bridge inspection for all highway bridges on the State Trunk System and all local highway systems since 1980. The purpose is now twofold:

- 1) For ensuring the safety of each structure for the traveling public and
- 2) For gathering data necessary to implement an effective bridge management system.

The proposed rule—making will:

- 1) Eliminate reference to the “division of highways” in the rule language.
- 2) Change the maximum inspection interval for state maintained bridges from “annually” to that maximum interval required by the federal government which is at least every two years with some exceptions for certain classes of structures.
- 3) Change the required reporting date for local bridges by counties from February 1 to January 15 of each odd-numbered year.

Analysis:

Rather minor language changes are being suggested, but the major impact will be to require inspections of most STH bridges once every two years instead of every year in concert with federal requirements. As the Department continues the development of Corridors 2020 and the Backbone system, many more structures are added to the STH system each year. Current rule language requires each of those new bridges to be inspected on a yearly basis along with all the older bridges. In addition, for bridge management reasons, the inspection has expanded to include more detail about each structure, requiring more elements to be individually identified and recorded, which has increased the time required for each inspection; however, trained and certified staff available to do the inspections has not appreciably increased during this period. The federal requirement is for an inspection at intervals not to exceed two years, and the present rule applies this inspection interval to local system bridges. It makes sense for the STH system bridge inspection interval to be the same. That would give the Districts the opportunity to inspect bridges which might be showing distress more often rather than being required to inspect brand new bridges yearly. There is no indication from any of the bridge expertise available at the federal and state level that safety would be compromised by this change.

Statutory authority for the rule:

Section 84.17 (3), Stats., and 23 U.S.C. 144.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

An estimate of state employee time would be a maximum of 8 hours.

Veterinary Examining Board

Subject:

VE Code – Relating to computerized national examination; application procedures.

Description of policy issues:

Objective of the rule:

Set forth the deadlines for eligibility to sit for the new computerized national examination as well as the new application procedures.

Policy analysis:

The current national examination for veterinarians is a paper and pencil examination. The examination will be changed to a computerized examination in the year 2000. Changes to the current rule on administration of the examination as well as changes to the application deadline date need to be amended.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 453.03 (1), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

60 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On November 11, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 81, Wis. Adm. Code, relating to grade standards for Colby and Monterey (Jack) cheese.

Agency Procedure for Promulgation

A public hearing is required and public hearings will be held by the Department after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Food Safety is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Terri Wenger
Division of Food Safety
Telephone (608) 224-4714

or

Attorney Karl Marquardt
Telephone (608) 224-5031

Health and Family Services

Rule Submittal Date

On November 16, 1998, the Wisconsin Department of Health and Family Services referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Section 146.40 (4g) and (4r), Stats., as affected by 1997 Wis. Acts 27 and 237, and s. 227.11 (2), Stats.

The proposed rule affects ch. HFS 13, Wis. Adm. Code, relating to reporting and investigation of caregiver misconduct and operation of caregiver misconduct registry.

Reason for rules, intended effects, requirements:

These rules implement the expansion of the misconduct part of the nurse aide registry under s. 146.40 (4g), Stats., that was mandated by 1997 Wis. Act 27 changes to s. 146.40 (4g) and (4r), Stats.

The rule-making order provides for taking the misconduct part of the nurse aide registry out of ch. HSS 129, where it has been co-located with the qualifications part, and moving it to a new ch. HFS 13 which directs regulated facilities, agencies and programs and permits interested individuals to report to the Department allegations that caregivers working for the affected

service providers abused or neglected clients or misappropriated client property; directs the Department to review and investigate each allegation and, pending appeals, to enter substantiated allegations on a Caregiver Misconduct Registry; and directs the Department to disclose information about substantiated misconduct to prospective employers and other interested persons upon request. Similar emergency rules have been in effect since October 1, 1998.

Forms:

Section HFS 13.05 (3) (a) Report of Alleged Client Abuse, Neglect or Misappropriation (DSL 2447)

Section HFS 13.05 (4) (a) Information Provided by Person with Knowledge of Alleged Incident (DSL 2448)

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

If you have questions regarding this rule, you may contact:

Larry Hartzke
Division of Supportive Living
Telephone (608) 267-2943

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 12, 1998.

Analysis

These changes will affect ss. Ins 3.48, 3.50, 3.52, 3.67 and 6.11 (3) (b) 4. and ch. Ins 9, Wis. Adm. Code, relating to the managed care plans and health benefit plans.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and the date for the public hearing is December 17, 1998.

Contact Person

To obtain a copy of the proposed rule, contact:

Asabi Hayes
OCI Central Files
Telephone (608) 266-0110

For additional information, please contact:

Julie E. Walsh, OCI Legal Unit
Telephone: (608) 264-8101
Email: jwalsh1@mail.state.wi.us

Insurance, Commissioner of**Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 13, 1998.

Analysis

These changes will affect ch. Ins 51, Wis. Adm. Code, relating to risk-based capital for health insurers.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and the date for the public hearing is January 29, 1999.

Contact Person

To obtain a copy of the proposed rule, contact:

Asabi Hayes
OCI Central Files
Telephone (608) 266-0110

For additional information, please contact:

Stephen Mueller
OCI Legal Unit
Telephone: (608) 267-2833
Email: smueller@mail.state.wi.us

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WM-34-98] to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rule affects s. NR 10.40 (5), relating to turkey hunts by the disabled.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and a public hearing has been scheduled for December 15, 1998.

Contact Person

Any questions or comments may be directed to:

Keith Warnke
Bureau of Wildlife Management
Telephone (608) 264-6023

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. FH-50-98] to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rule affects s. NR 20.03 (1) (k), relating to sport fishing for yellow perch in Lake Michigan tributary streams.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and a public hearing has been scheduled for December 15, 1998.

Contact Person

Any questions or comments may be directed to:

William Horns
Bureau of Fisheries Mgmt. & Habitat Protection
Telephone (608) 266-8782

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. FH-46-98] to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rule affects ch. NR 25, relating to Lake Michigan and Lake Superior commercial fishing boards.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and a public hearing has been scheduled for December 14, 1998.

Contact Person

Any questions or comments may be directed to:

William Horns
Bureau of Fisheries Mgmt. & Habitat Protection
Telephone (608) 266-8782

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. FR-51-98] to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rule affects ch. NR 47, relating to forestry grant programs.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and public hearings have been scheduled for December 11, 15 and 16, 1998.

Contact Person

Any questions or comments may be directed to:

Robert Mather
Bureau of Forestry
Telephone (608) 266-1727

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WT-59-98] to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rules affect chs. NR 200-299, relating to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and public hearings have been scheduled for December 14, 15 and 22, 1998.

Contact Person

Any questions or comments may be directed to:

Roger Larson
Bureau of Watershed Management
Telephone (608) 266-2666

Natural Resources**Rule Submittal Date**

On November 6, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. AM-38-98] to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. NR 400-499, relating to air pollution control regulations.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and a public hearing has been scheduled for December 18, 1998.

Contact Person

Any questions or comments may be directed to:

Robert Park
Bureau of Air Management
Telephone (608) 266-1054

Pharmacy Examining Board**Rule Submittal Date**

On November 16, 1998, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2g) (b), Stats.

The proposed rule-making order relates to pharmacists administering by injection a drug product or device in the course of teaching a patient self-administration techniques.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 13, 1999 at 1400 East Washington Avenue, Room 179A at 9:30 a.m.

Contact Person

Pamela Haack
Administrative Rules Coordinator
Telephone (608) 266-0495

Regulation and Licensing**Rule Submittal Date**

On November 3, 1998, the Wisconsin Department of Regulation and Licensing submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 227.11 (2), Stats., and s. 440.974, Stats., as created by 1997 Wis. Act 81

The proposed rule-making order creates chs. RL 131 to 135, relating to the registration and regulation of home inspectors.

Agency Procedure for Promulgation

A public hearing is required, and the public hearing is scheduled for December 17, 1998.

Contact Person

If you have questions regarding this rule, you may contact:

Pamela Haack
Administrative Rules Coordinator
Telephone (608) 266-0495

Revenue**Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on November 12, 1998, the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends s. Tax 2.39 and creates s. Tax 2.395, relating to the use of an alternative apportionment method.

Agency Procedure for Promulgation

A public hearing on the proposed rule order is required. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Person

If you have questions regarding this rule, you may contact:

Mark Wipperfurth
Income, Sales and Excise Tax Division
Telephone (608) 266-8253

Transportation**Rule Submittal Date**

On November 12, 1998, the Wisconsin Department of Transportation submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order affects ch. Trans 101, relating to demerit point assessment for operating after suspension and revocation offenses.

Agency Procedure for Promulgation

A public hearing is not required. The organizational unit primarily responsible for promulgation of the proposed rule is the Division of Motor Vehicles, Bureau of Driver Services.

Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal
Dept. of Transportation
Telephone (608) 266-8810

NOTICE SECTION

Notice of Hearings

Agriculture, Trade & Consumer Protection

► (Reprinted from Mid–November, 1998 *Wis. Adm. Register*.)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules (proposed s. ATCP 139.05 (3)), relating to bicycle helmets and drawstrings on children's clothing at the times and places shown below.

Written Comments

The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **February 15, 1999**, for additional written comments.

Copies of Rule and Contact Person

Interested persons may obtain a free copy of these rules from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 10930 W. Potter Road, Suite C, Milwaukee, WI 53226, at (414) 266–1239. Copies will also be available at the public hearings.

An interpreter for the hearing–impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **December 21, 1998**, either by writing to Judy Jung, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608) 224–4972, or by contacting the message relay system (TTY) at (608) 266–4399 to forward your call to the Department at (608) 224–5058. Handicap access is available at the hearings.

Hearing Information

Four hearings are scheduled:

Date & Time	Location
January 11, 1999 Monday 10:00 a.m.	Board Room, DATCP 2811 Agriculture Dr. MADISON, WI 53704 Handicapped accessible
January 12, 1999 Tuesday 10:00 a.m.	Conference Room, DATCP Milwaukee Regional Office 10930 W. Potter Rd., Ste. C Milwaukee, WI 53226–3450 Handicapped accessible
January 13, 1999 Wednesday 10:00 a.m.	1st Flr. Conference Rm., DATCP Eau Claire Regional Office 3610 Oakwood Hills Pkwy. Eau Claire, WI 54701–7754 Handicapped accessible
January 14, 1999 Thursday 10:00 a.m.	Conference Rm. 152B, DATCP Green Bay Regional Office 200 N. Jefferson St. Green Bay, WI 54301

Analysis by the Dept. of Agriculture, Trade & Consumer Protection

Statutory authority: ss. 93.07 (1), 100.20 (2) and 100.42 (2)

Statutes interpreted: ss. 93.07 (1), 100.20 (2) and 100.42

The Department of Agriculture, Trade and Consumer Protection currently administers s. 100.42, “Product Safety,” Wis. Stats., and ch. ATPC 139, “Hazardous Substances,” Wis. Adm. Code. This rule creates new provisions concerning bicycle helmets and drawstrings in children’s clothing and makes other technical changes to the rule.

Rule Coverage

This rule changes the title of ch. ATPC 139 to better reflect the contents of the rule, adds an explanatory note to the beginning of the Chapter to explain the statutory authority for the rules, and creates new provisions concerning bicycle helmet safety standards and drawstrings in children’s clothing.

Title of Chapter

The title of ch. ATPC 139 will change from “Hazardous Substances,” to “Consumer Product Safety.” The new title is more inclusive and better describes the contents of the chapter, which includes rules on labeling requirements of certain hazardous substances as well as rules which ban the sale of items which have been determined to be unsafe.

The Department anticipates that in the future it will be beneficial to create rules about other consumer product safety issues, beyond just “hazardous substances.” Therefore, it would be helpful to change the title of the rule chapter to better reflect the current contents of the chapter, as well as future contents.

New Explanatory Note

The current rule includes a “Note” that provides some history on the rule, but the current “Note” does not include any information about the statutory authority for the rule or what penalties and remedies apply to violations of the rule.

It has become standard practice in the Department to provide an explanatory “Note” at the beginning of each rule that identifies the statutory authority for the rule and the statutory references for the penalties and remedies that apply to violations of the rule. This information is often requested by attorneys in the private sector who are trying to interpret the rule for a client. The new “Note” will bring this rule into conformity with the Department’s other rules and will provide basic information that is helpful to others who interpret the rule.

Bicycle Helmet Safety Standards

Deaths and injuries caused by bicycle accidents are becoming a greater safety concern nationwide. The federal Consumer Product Safety Commission (CPSC) indicates that each year about 900 people are killed in bicycle-related accidents — 200 of which are children. About 60% of all the deaths from bicycle accidents involve head injuries. In addition, another 500,000 people are injured each year in bicycle-related accidents and require medical treatment, usually in hospital emergency rooms.

Research shows that bicycle helmets are effective in substantially reducing the number of head injuries caused by bicycle accidents. Accordingly, the CPSC has promulgated safety standards for all bicycle helmets sold in the United States after March 10, 1999.

Current Department rules do not provide any kind of safety standards for bicycle helmets sold in Wisconsin. This rule adopts the Safety Standard for Bicycle Helmets created by the CPSC and bans and prohibits from sale in Wisconsin any bicycle helmet manufactured or imported after March 10, 1999, that does not meet all the federal CPSC safety standards.

Drawstrings in Children’s Clothing — Safety Standards

Since 1996 the CPSC has been concerned about the safety hazards created by drawstrings in children’s clothing. In 1996 the CPSC published voluntary “Guidelines for Drawstrings on Children’s Outerwear,” but no mandatory rules or standards have been created by the CPSC.

The Department believes the CPSC’s recommended guidelines are helpful, but do not adequately address the safety problem posed by drawstrings in children’s clothing. To make children’s clothing safer, this rule extends the CPSC standards for drawstrings on children’s outerwear to all children’s clothing. This rule bans and prohibits from sale in Wisconsin all children’s clothing, size 2T–16, which uses drawstrings.

Fiscal Estimate

See page 30 of the Mid–November, 1998 Wis. Adm. Register.

Initial Regulatory Flexibility Analysis

See page 30 of the Mid–November, 1998 Wis. Adm. Register.

Notice of Hearings

Agriculture, Trade & Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on a proposed permanent rule amending ch. ATPC 81, Wis. Adm. Code, relating to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

Written Comments

The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until December 18, 1998 for additional written comments.

Copies of Rule and Contact Person

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708–8911, or by calling 608–224–4700. Copies will also be available at the public hearings.

An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **December 4, 1998** either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Information

<u>Date & Time</u>	<u>Location</u>
December 11, 1999 Friday 10:00 a.m. – 12:00 p.m. (noon)	Mtg. Rm. 2, 3rd Floor Outagamie Co. Adm. Bldg. 410 S. Walnut St. APPLETON, WI 54911 (Access for handicapped persons is available through the Human Services Building entrance on the north side of the building.)
December 16, 1998 Wednesday 10:00 a.m. – 12:00 p.m. (noon)	Conference Rm. 111 First Floor Iowa Co. Courthouse 222 N. Iowa St. DODGEVILLE, WI 53533 (Access for handicapped persons is available at the back entrance on the west side of the building.)

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 97.09 (1) and 97.177 (1), (2) and (4)

Statutes interpreted: ss. 97.09 and 97.177

This proposed rule modifies current rules under ch. ATPC 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This proposed rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under the proposed rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be “evenly distributed” and “small.” Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be “evenly distributed,” without the added emphasis on “small.” Wisconsin grade B has no requirement for mechanical openings to be “evenly distributed.”

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in ch. ATPC 81, Wis. Adm. Code. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This rule amends ch. ATPC 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. This rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$3120 will be incurred by the Department for permanent rule development.

Long – Range Fiscal Implications

None anticipated.

Initial Regulatory Flexibility Analysis

The proposed rule modifies current rules under ch. ATPC 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese. This rule would implement, on a “permanent” basis, the revised grade standards which the Department established by emergency rule on August 8, 1998.

Under current DATCP rules, colby and monterey (jack) cheese must have numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

The recently adopted emergency rule temporarily eliminated rule provisions requiring mechanical openings in colby and monterey (jack) cheese. Under the emergency rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body, depending upon the method of manufacture. When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. The proposed rule would make these same rule changes on a permanent basis.

The proposed rule will not impose any direct costs on small businesses. These amendments do not require any additional reporting or recordkeeping. In addition, no other new procedures are proposed. No additional knowledge or professional skills are needed to meet the requirements of these proposed amendments.

High volume manufacturers (typically larger businesses) using newer technology, equipment and packaging have experienced difficulties in manufacturing cheese to meet the current grade requirements for mechanical openings. Small cheese factories and packaging operations using more traditional technology, equipment and packaging could more easily achieve the open body characteristics currently required for Wisconsin certified premium grade AA and Wisconsin grade A (Wisconsin state brand). As a consequence of the rule change and the elimination of the requirement for mechanical openings, these small businesses may now experience increased competition in the marketplace in the sale of Wisconsin graded cheese which may now have an open or closed body. However, an apparent majority of the cheese industry believes that small cheese processors will be able to maintain or grow a niche market for open-bodied colby and monterey (jack) cheese in the retail deli case.

Notice of Proposed Rule

Financial Institutions (Savings Institutions)

Notice is hereby given that pursuant to ss. 214.715 (1) (d) and 215.02 (7) (a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Division of Savings Institutions in the Department of Financial Institutions will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **December 1, 1998**, the Division of Savings Institutions in the Department of Financial Institutions is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

The Division of Savings Institutions in the Department of Financial Institutions adopts an order to amend ss. DFI-SB 15.01 (1) (b) and (d), DFI-SL 1.03 (14) and DFI-SL 15.01 (1) (b) and (d); and to create ss. DFI-SB 1.03 (7m), DFI-SB 15.01 (3) (c), DFI-SL 1.03 (8m) and DFI-SL 15.01 (3) (c), relating to codifying a policy authorizing savings banks and savings and loan associations to invest in limited liability companies.

Analysis Prepared by the Division of Savings Institutions in the Dept. of Financial Institutions

Statutory authority: ss. 214.715 (1) (d) and 215.02 (7) (a)

Statutes interpreted: ss. 214.04 (8), 214.485 (10) and 215.13 (26) (f)

Under current statutes, savings banks and savings and loan associations ("S&Ls") may invest in the stock of subsidiary corporations that are formed for specific purposes. Long-standing administrative rules have permitted savings institutions to also invest in subsidiary partnerships and joint ventures.

Chapters 214 and 215, Stats. authorize investments in subsidiary "corporations". However, since 1989 for S&L's and 1994 for savings banks, administrative rules have allowed investments in subsidiary partnerships and joint ventures. These long-standing administrative rules have considered these two types of legal entities as the functional equivalent of corporations. The more recently created business entity known as the limited liability company ("LLC") has been allowed under an informal interpretation for the same reason. This rule now codifies that interpretation by expanding the types of subsidiary business entities that savings institutions may form and invest in to include the LLC.

Fiscal Estimate

This rule will have no fiscal impact on the Division of Savings Institutions in the Department of Financial Institutions. The review of a savings bank's and a savings and loan association's investing in limited liability companies will be done as part of the routine examination of savings institutions, with existing personnel and resources.

Initial Regulatory Flexibility Analysis

This rule will provide that all savings banks and S&Ls, including savings banks and S&Ls included in the definition of "small business" under s. 227.114 (1) (a), Stats. may invest in subsidiary LLCs. Exempting small businesses from this rule would be contrary to this objective and not in the best interests of the savings institutions and the public.

Contact Person

Thomas M. Boykoff, Administrator
Division of Savings Institutions
Dept. of Financial Institutions
Telephone: (608) 261-4338

Text of Rule

Pursuant to the authority of the Division of Savings Institutions in the Department of Financial Institutions under ss. 214.715 (1) (d) and 215.02 (7) (a), Stats., the Division amends ss. DFI-SB 1.03 (11), DFI-SB 15.01 (1) (b) and (d), DFI-SL 1.03 (14) and DFI-SL 15.01 (1) (b) and (d); and creates ss. DFI-SB 1.03 (7m), DFI-SB 15.01 (3) (c), DFI-SL 1.03 (8m), DFI-SL 15.01 (3) (c) and DFI-SL 13.03 (3) (d) 6, relating to codifying a policy authorizing savings banks and savings and loan associations to invest in subsidiary limited liability companies.

SECTION 1. DFI-SB 1.03 (7m) is created to read:
DFI-SB 1.03(7m) “LLC” means a limited liability company organized under ch. 183, Stats.

SECTION 2. DFI-SB 1.03(11) is amended to read:
DFI-SB 1.03 (11) “Subsidiary” means any business in which a savings bank directly or indirectly owns an interest, and includes a service corporation, partnership, joint venture, LLC and a company or business in which a savings bank indirectly owns an interest through another subsidiary or a series of subsidiaries.

SECTION 3. DFI-SB 15.01 (1) (b) and (d) are amended to read:
DFI-SB 15.01 (1) (b) Partnership ~~or~~ a joint venture or LLC capital contributions.
(d) Liability for the debt of a partnership ~~or~~ a joint venture or LLC.

SECTION 4. DFI-SB 15.01 (3) (c) is created to read:
DFI-SB 15.01 (3) (c) LLC. An application for approval of an investment in an LLC shall contain:
1. A copy of the LLC’s articles of organization and any amendments.
2. A copy of the LLC’s operating agreement and any amendments.
3. A list of members of the LLC.
4. A list of officers, directors or other persons with managerial authority of the LLC.

SECTION 5. DFI-SL 1.03 (8m) is created to read:
DFI-SL 1.03 (8m) “LLC” means a limited liability company organized under ch. 183, Stats.

SECTION 6. DFI-SL 1.03(14) is amended to read:
DFI-SL 1.03 (14) “Subsidiary” means any business in which an association directly or indirectly owns an interest, and includes a service corporation, partnership, joint venture, LLC and a business in which an association indirectly owns an interest through another subsidiary or a series of subsidiaries.

SECTION 7. DFI-SL 15.01 (1) (b) and (d) are amended to read:
DFI-SL 15.01 (1) (b) Partnership ~~or~~ a joint venture or LLC capital contributions.
(d) Liability for the debt of a partnership ~~or~~ a joint venture or LLC.

SECTION 8. DFI-SL 15.01 (3) (c) is created to read:
DFI-SL 15.01 (3) (c) LLC. An application for approval of an investment in an LLC shall contain:
1. A copy of the LLC’s articles of organization and any amendments.
2. A copy of the LLC’s operating agreement and any amendments.
3. A list of members of the LLC.
4. A list of officers, directors or other persons with managerial authority of the LLC.

Notice of Hearing
Health and Family Services
(Community Services, Chs. HFS/HSS 30--)

Notice is hereby given that pursuant to ss. 51.61 (9) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of s. HFS 94.24 (2) (d) 1. d. and (e), relating to routine personal searches and searches of the rooms and personal belongings of ch. 980, Stats., patients at the Wisconsin Resource Center and the maximum security facility at the Mendota Mental Health Institute, and emergency rules now in effect on the same subject.

Hearing Information

The public hearing will be held:

Date & Time	Location
December 17, 1998 Thursday 1:00 p.m.	Rm. B139 State Office Bldg. 1 W. Wilson St. MADISON, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building, and take a central elevator to Level 1B.

Analysis Prepared by the Dept. of Health and Family Services

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people:

- 1) Inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and
- 2) Persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats.

About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% of the patients are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center, staff before August 1, 1998 were making random searches of the rooms and personal belongings of patients who were committed to the Department under ch. 980, Stats. A patient challenged the practice in a lawsuit, claiming that it violated s. HFS 94.24 (2) (e) which permitted a search only when there was documented reason to believe that security rules had been violated, unless the search was of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is a civil commitment. The court handling the case was expected to rule in favor of the patient. Therefore, the Center temporarily suspended random searches, pending amendment of the rule. The rule was amended by an emergency order on August 15, 1998.

This is the permanent order to amend s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota Mental Health Institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change permits the Wisconsin Resource Center to continue random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

These patients have been committed or are being detained because they have been found to be dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is that this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

This permanent rule-making order also amends s. HFS 94.24 (2) (d) 1. d. to authorize routine personal searches of ch. 980 patients at the Wisconsin Resource Center and to provide that routine personal searches may take place also of patients who reside in the maximum security facility at the Mendota Mental Health Institute. A "personal search," as defined in s. HFS 94.02 (33), is a search of a patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth.

Random searches of the rooms and personal belongings of ch. 980 patients and routine searches of their persons help the Wisconsin Resource Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. The searches can also deter patients from harboring dangerous items in their rooms or on their person. These could go undetected and be used at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches of patient rooms and belongings and routine personal searches of these patients are very effective treatment tools in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Text of Rule

SECTION 1. HFS 94.24 (2) (d) 1. d. and (e) are amended to read:

HFS 94.24 (2) (d) 1. d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35 (3) or 51.37, Stats.;

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that ~~in forensic units where routine searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with as specified in written facility policies.~~

Contact Person

To find out more about the hearing, write or phone:

Jim Yeadon
Division of Care and Treatment Facilities
P.O. Box 7851
Madison, WI 53707-7851

Telephone (608) 266-5525 or,
if you are hearing-impaired, 266-7376 (TTY)

If you are hearing- or visually-impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rule changes received at the above address no later than **December 22, 1998** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These rule changes will not affect the expenditures or revenues of state government or local governments.

This order amends s. HFS 94.24 (2) in the Department's rules relating to the rights of patients receiving treatment for a mental disability to permit routine personal searches of patients who reside in the maximum security facility at the Mendota Mental Health Institute and patients at the Wisconsin Resource Center who were committed for treatment under ch. 980, Stats., and to permit random searches of the rooms and personal belongings of those patients.

The amendments to s. HFS 94.24 (2) will permit the Wisconsin Resource Center to continue routine personal searches of those patients for security and effective treatment reasons and continue random searches of their rooms and personal belongings for the same reasons. The legality of random searches of the rooms and personal belongings of ch. 980, Stats., patients was recently called into question because of the language of s. HFS 94.24 (2) (e). This order amends that language, and also amends s. HFS 94.24 (2) (d) 1. d., to make clear that the Department may carry out routine personal searches of these patients.

The rule changes concern only the operation of state-operated mental health inpatient facilities, and not mental health inpatient facilities operated by local governments.

Initial Regulatory Flexibility Analysis

The amendments to s. HFS 94.24 apply to the Department, to the management and staff of the Wisconsin Resource Center and the Mendota Mental Health Institute, and to the affected patients at the two facilities. The rules do not apply to small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rule affecting ss. Ins 3.48, 3.50, 3.52, 3.67, 6.11(3)(b)4, ch. Ins 9, Wis. Adm. Code, relating to Managed Care Plans and Health Benefit Plans.

Hearing Information

December 17, 1998	Room 23
Thursday	OCI
10:00 a.m., or as soon as	121 E. Wilson St.
the matter may be reached	Madison, WI

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Julie E. Walsh, OCI, PO Box 7873, Madison WI 53707

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Asabi Hayes, Services Section, Office of the Commissioner of Insurance, at (608) 266–0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707–7873.

Notice of Hearing

Insurance, Commissioner of

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of ch. Ins 51, Wis. Adm. Code, relating to risk–based capital for health insurers.

Hearing Information

The public hearing will be held:

Date & Time	Location
January 29, 1999	Rm. 23, OCI
Friday	121 E. Wilson St.
10:00 a.m.	MADISON, WI

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41 (3) and 601.42

Statutes interpreted: ss. 609.97 (2) and 623.11

Currently, Wisconsin requires life and property and casualty insurers to maintain certain risk–based capital levels. The amendments to this rule will require health insurers to conform to risk–based capital standards recently adopted by the National Association of Insurance Commissioners (“NAIC”). The objective of this rule is to establish solvency standards for health insurers in order to increase protections for Wisconsin citizens who are covered by health insurance.

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are areceived at the Office of the Commissioner of Insurance (OCI) within 14 days following the date of the hearing. Written comments should be addressed to:

Stephen Mueller
Office of the Commissioner of Insurance
P.O. Box 7873
Madison, WI 53707

Copies of Rule and Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from:

Asabi Hayes, Service Section
Office of the Commissioner of Insurance
Telephone (608) 266–0110

or at

121 East Wilson Street
P.O. Box 7873
Madison, WI 53707–7873

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.014, 29.053 and 227.11, Stats., interpreting ss. 29.014 and 29.053(3), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 10.40(5), Wis. Adm. Code, relating to turkey hunts by the disabled. The proposed rule will allow disabled hunters to coordinate a turkey hunt on private property in any turkey hunting zone and choose the time period in which they would hunt. The flexibility of selecting the location and time period will allow disabled hunters to hunt on properties that are equipped to handle their needs. The number of special hunts would be limited and would not impact the number of permits available to regular hunters, nor would it impact their odds of receiving a permit.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 15, 1998 **Room 514, GEF #3**
Tuesday **125 S. Webster Street**
at 2:00 p.m. **Madison, WI**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Keith Warnke at (608) 264-6023 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Keith Warnke, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **December 15, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM-34-98] and fiscal estimate may be obtained from Mr. Warnke.

Fiscal Estimate

There is expected to be no long term fiscal impact from expanding disabled turkey hunter opportunities.

There will be a one-time cost of less than \$1,000 to develop and print application forms.

The number of hunters taking advantage of this new opportunity is expected to be less than 100 per year. All will be required to purchase the normal licenses and stamps required for turkey hunting. It is assumed that participants in this hunt would have purchased licenses, stamps, and applications to hunt turkey prior to this opportunity. Therefore we do not expect any increase in revenues.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.085, 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.085 and 29.174(2)(a), Stats., the Department of Natural Resources will hold a public hearing on revisions to s. NR 20.03(1)(k), Wis. Adm. Code, relating to sport fishing for yellow perch in portions of tributaries to Lake Michigan. The proposed rule extends regulations pertaining to sport fishing for perch in outlying waters of Lake Michigan to all "outlying trout and salmon waters" of Lake Michigan. The term "outlying trout and salmon waters" is defined by statute to include the lower reaches of tributary streams, as well as the open lake. This rule does not apply to tributaries to Green Bay.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small business.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 15, 1998
Tuesday
at 1:00 p.m.

Auditorium
Administration Bldg.
121 W. Main St.
Port Washington

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **December 28, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FH-50-98] and fiscal estimate may be obtained from Mr. Horns.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Natural Resources
(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.33(1), as affected by 1997 Wis. Act 189, and 1997 Wis. Act 189, sec. 3t, interpreting s. 29.33(1), as affected by 1997 Wis. Act 189, the Department of Natural Resources will hold a public hearing on amendments to ch. NR 25, Wis. Adm. Code, relating to commercial fishing on Lake Michigan and Lake Superior. Prior to the adoption of 1997 Wis. Act 189, the ability to allocate individual catch quotas to Lake Superior and Lake Michigan commercial fishing license holders was held by the Lake Michigan and Lake Superior Commercial Fishing Boards. The Department held, and still retains, the authority to establish overall species harvest limits. With adoption of 1997 Wis. Act 189, the authority to allocate quotas was removed from the fishing boards and placed with the Department. This rule simply amends the administrative code to conform to the statutory authority.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 14, 1998
Monday
at 1:00 p.m.

Room 317, GEF #2
101 S. Webster St.
Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **December 28, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FH-46-98] and fiscal estimate may be obtained from Mr. Horns.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1---)

Notice is hereby given that pursuant to ss. 23.097 and 227.11(2)(a), Stats., interpreting 28.11(5m), Stats., and 16 USC 2101 et seq., the Department of Natural Resources will hold public hearings on revisions to ch. NR 47, Wis. Adm. Code, relating to forestry grant programs.

Chapter NR 47, subch. I establishes general provisions for all grant programs. The amended rule allows greater flexibility in reporting requirements and conforms with federal requirements for records retention.

Chapter NR 47 subchs. II and III establish provisions to implement the Forest Stewardship grant program and the Stewardship incentive program. The amended rule reflects the changing views of the coordinating committee by easing grant guidelines and reflects changes in the federal guidelines.

Chapter NR 47 subch. V establishes provisions to implement the urban forestry grant program. The amended rule will allow not-for-profit organizations to receive partial advances of grant funds. Other changes are proposed to conform language to federal requirements, clarify project and cost eligibility, clarify application procedures, correct language changed by reorganization and correct an omitted eligible applicant.

Section NR 47.70 establishes provisions to implement the county forest administrator grant program. The amended rule reflects a statutory change for a payment of half the annual salary and half fringe benefit costs of the position. Other changes extend the application filing deadline by 2 months and establish procedures to spend any unused funds the following year or return them.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 11, 1998 Friday at 10:00 a.m.	Room 611B, GEF#2 101 S. Webster St. Madison
December 15, 1998 Tuesday at 11:00 a.m.	Wetland Room Bay Beach Wildlife Sanctuary Sanctuary Road Green Bay
December 16, 1998 Wednesday at 10:00 a.m.	Room 185 West Central Region Hdqrs. 1300 W. Clairemont Ave. Eau Claire

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dick Rideout at (608) 267-0843 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Robert Mather, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than **December 21, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FR-51-98] and fiscal estimate may be obtained from Mr. Mather.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources

(Environmental Protection – WPDES, Chs. NR 200––)

Notice is hereby given that pursuant to ss. 283.31, 283.37 and 227.11(2)(a), Stats., interpreting ss. 283.31 and 283.37, Stats., the Department of Natural Resources will hold public hearings on amendments to ss. NR 200.03 and 206.03, Stats., relating to large scale soil absorption systems and mound systems. The proposed rule will increase the threshold that will be used to determine whether or not to issue WPDES permits for onsite soil absorption systems from 8,000 gallons per day to 12,000 gallons per day. These changes are based on a proposed agreement between DNR and the Department of Commerce regarding agency responsibility over these systems. Under the agreement, DNR will regulate all large onsite soil absorption systems and Commerce will regulate the small onsite soil absorption systems that accept domestic wastewater.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.14, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 14, 1998 Monday at 10:00 a.m.	Room 709, GEF #2 101 S. Webster St. Madison
December 15, 1998 Tuesday at 1:00 p.m.	Council Chambers Wausau City Hall 407 Grant St. Wausau
December 22, 1998 Tuesday at 1:00 p.m.	Auditorium La Crosse Human Services Bldg. 300 N. 4th St. La Crosse

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Roger Larson at (608) 266–2666 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Roger Larson, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than **December 30, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WT–59–98] and fiscal estimate may be obtained from Mr. Larson.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Natural Resources

(Environmental Protection–Air Pollution Control, Chs. NR 400–)

Notice is hereby given that pursuant to ss. 227.11(2)(a) and 285.11(1), Stats., and revising the State Implementation Plan developed under that provision, the Department of Natural Resources will hold a public hearing on revisions to chs. NR 400 to 499, Wis. Adm. Code, relating to air pollution control regulations. The proposed rule updates and cleans up numerous chapters in the NR 400 series to improve rule clarity, consistency between chapters and consistency with DNR and U.S. EPA policies and procedures.

The most significant changes are the addition of 20 compounds to those excluded from the definition of “volatile organic compound” in ch. NR 400 in accord with recent federal changes, a revision to allow less frequent inspection of internal floating roofs of storage tanks for petroleum liquids as allowed under similar federal rules, and a revision to allow a 95% overall VOC control efficiency for surface coating operations as provided in model federal rules. Other changes, not expected to be controversial, include:

Revision of references to federal hazardous air pollutants listed under section 112(b) of the Clean Air Act to account for subsequent additions to or deletions from the list by EPA under 40 CFR part 63, Subpart C.

The addition of lines for propylene glycol monomethyl ether (PGME) in Table 2 of ch. NR 407 and Table 1 of ch. NR 438 to reflect the regulation of this compound (since 1995) under Table 5 of ch. NR 445. The updating of more than 30 references to test methods incorporated by reference to cite the most recent versions.

The creation of several definitions giving the meanings of certain undefined terms used in the rules to reflect the meanings currently being applied.

Restoration of an exemption from construction permit provisions, inadvertently removed in a previous rule change, for a modification which does not cause emissions to exceed general exemption levels.

The repeal of certain obsolete provisions, and style, formatting, cross reference and grammar corrections and other minor changes.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

December 18, 1998 **Room 511, GEF #2**
Friday **101 S. Webster St.**
at 10:30 a.m. **Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266–1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Robert Park, Bureau of Air management, P.O. Box 7921, Madison, WI 53707 no later than **December 29, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing.

A copy of the proposed rule AM–38–98 and its fiscal estimate may be obtained from:

Proposed Rule
Bureau of Air Management
P.O. Box 7921
Madison, WI 53707
Phone: (608) 266–7718
FAX: (608) 267–0560

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing ***Regulation and Licensing***

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.974, Stats., and interpreting ss. 440.972, 440.973, 440.975, 440.978 and 440.999, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 131 to 135, relating to the registration and regulation of home inspectors; and to consider the emergency rules that are now in effect relating to home inspectors.

Hearing Information

Date & Time	Location
December 17, 1998 Thursday 1:00 p.m.	Rm. 180 1400 East Washington Ave. MADISON, WI

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **January 4, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.974, Stats., as created by 1997 Wis. Act 81.

Statutes interpreted: ss. 440.972, 440.973, 440.975, 440.978 and 440.999, Stats.

This proposed rule-making order creates new rules, relating to 1997 Wis. Act 81, which was published on April 27, 1998, and which initiates the regulation of home inspectors in Wisconsin on November 1, 1998.

These rules create 5 chapters, numbering from RL 131 to RL 135, relating to authority and definitions, applications, examinations, standards of practice, and continuing education. These rules were developed with the advice and counsel of an advisory committee, created pursuant to 1997 Wis. Act 81 and consisting of 6 home inspectors and 3 public members.

Chapter RL 131 states the authority for the rules and defines 29 terms which are used in chs. RL 131 to 135.

Chapter RL 132 contains 3 sections which state the requirements for registration as a home inspector and these sections designate what requirements must be satisfied to be registered, depending on the date of application and the availability of one or other part of a registration examination, as specified in ch. RL 133. Chapter RL 132 also states the requirements for renewing a credential before and after the renewal date. In both cases, satisfaction of continuing education is required. Chapter RL 132 also states that registration of an applicant may be denied for fraud or misrepresentation in the application or for any of the grounds under s. 440.978, Stats., for which the department may discipline a registrant.

Chapter RL 133 creates the examination requirements referenced in ch. RL 132. The provisions create a two-part examination or, at a certain point in time, a single-part examination which combines Part I and Part II. Part I of the examination covers the Wisconsin statutes relating to home inspections. Part II will cover administrative rules and other principles and procedures relating to the practice of home inspection. Since Part II will not be available before January 1, 2000, applicants will not be required to complete Part II before that date; however, they must complete Part II in order to renew their credential in a timely manner in the fall of 2000. This chapter also creates sections relating to the passing grade on the examination and procedures for applicants to review their examination.

Chapter RL 134 creates standards of practice for conducting and reporting on home inspections. This chapter has provisions relating to general requirements and provisions relating to the inspection of mechanical and structural components, including foundations, columns, flooring systems, roofs, exteriors, plumbing systems, electrical systems, interiors, heating systems, central air conditioning, and insulation and ventilation. This chapter also requires a home inspector to give a client a written report following an inspection. The rules specify what must be stated in the report and what is not required to be stated in the report.

Chapter RL 135 contains provisions relating to continuing education. The rules define "hour" as being 50 minutes of classroom instruction. The rules require 40 hours of continuing education every two years, as required by 1997 Wis. Act 81. The rules contain provisions relating to instructors receiving approval for classes they instruct, an extension of time to complete the required education for health reasons or active duty in the military service, requirements that home inspectors receive a certificate of completion from a program provider, requirements that approved courses shall relate to the general subject of home inspections, and a prohibition against a person being approved to instruct continuing education courses while a disciplinary action is in effect against the person.

Fiscal Estimate

These rules implement the regulation of home inspectors as enacted with the creation of 1997 Wis. Act 81. The Department is estimating that there will be 600 registrants, which is double its original estimate. The re-estimate is based on the number of applications which have been requested and on the number of applicants taking the statute and rules examination.

The costs associated with this legislation have been enumerated in the agency's biennial budget request. Costs include expenses of holding quarterly meetings of the Secretary's Advisory Committee of \$3,348, printing costs of \$580 and \$530 in postage costs. These costs may be higher than previously estimated because of the re-estimate of applicants.

Annual revenues for this profession are estimated to be \$12,300.

The Department is not aware of any local government costs.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of these proposed rules and of the emergency rules are available without cost upon request to:

Pamela Haack
Office of Administrative Rules
Dept. of Regulation and Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

Notice of Proposed Rule Revenue

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 77.54 (9a), Stats., s. 77.51(18) and (22) (a), Stats., as amended by 1997 Wis. Act 27 and s. 77.54 (43), Stats., as created by 1997 Wis. Act 27, and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **December 1, 1998**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

Analysis by the Dept. of Revenue

Statutory authority: s. 227.11 (2) (a)

Statutes interpreted: s. 77.54 (9a), Stats., s. 77.51 (18) and (22) (a), Stats., as amended by 1997 Wis. Act 27, and s. 77.54 (43), Stats., as created by 1997 Wis. Act 27

SECTION 1. Tax 11.19 (2) (d) and (f) and (5) (intro.) and (b) are amended, to reflect the amendment of s. 77.51 (18) and (22) (a), Stats., and the creation of s. 77.54 (43), Stats., by 1997 Wis. Act 27. These changes provide a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin. Previously, these materials were only exempt from use tax.

Tax 11.19 (6) is amended, to clarify that the exemption for governmental units applies only to Wisconsin governmental units, and to reflect that certificate of exempt status numbers are being given to governmental units.

SECTION 2. Tax 11.70 (3) (m) is created, to reflect the amendment of s. 77.51 (18) and (22) (a), Stats., and the creation of s. 77.54 (43), Stats., by 1997 Wis. Act 27.

Text of Rule

SECTION 1. Tax 11.19 (2) (d) and (f), (5) (intro.) and (b) and (6) are amended to read:

Tax 11.19 (2) (d) Section 77.54 (2m), Stats., provides an exemption for the "gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred with charge to the recipient." This exemption applies to newspapers, shoppers guides and periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51(8), Stats.

(f) Section 77.51(18) and (22) 77.54(43), Stats., provides that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising any right or power over a sales and use tax exemption for raw materials for used for the processing, fabricating or manufacturing into, attachment of, attaching to or incorporation into incorporating into, printed materials to be that are transported outside Wisconsin and thereafter used solely outside Wisconsin.

(5) Wisconsin sales and use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53(1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

(b) The resulting printed materials will be shipped outside Wisconsin for use transported and used solely outside Wisconsin.

(6) EXEMPT PURCHASERS. Sales of printed material to federal and Wisconsin governmental units; and Wisconsin public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to persons nonprofit organizations holding a certificate of exempt status can be shown to be exempt by recording the certificate of exempt status number on the bill of sale.

Note to Revisor: 1) In sub. (3), all quoted statutory material should be in italics.

2) Replace the first note at the end of s. Tax 11.19 with the following:

Note: Section Tax 11.19 interprets ss. 77.51 (8) and (13h), 77.52 (2) (a) 11., 77.54 (2m), (9a), (15), (25) and (43) and 77.55 (1), Stats.

3) In the second note at the end of s. Tax 11.19, remove the word "and" before part (i) and add the following at the end of the note:

; and (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 2. Tax 11.70 (3) (m) is created to read:

Tax 11.70 (3) (m) Raw materials processed, fabricated or manufactured into, attached to or incorporated into printed materials that are transported and used solely outside Wisconsin.

Example: Company A, located in Wisconsin, publishes catalogs it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the catalogs for Company A. The catalogs are transported and used solely outside Wisconsin.

The paper purchased by Company A for the catalogs is exempt from Wisconsin sales or use tax.

Note to Revisor: 1) At the end of sub. (2) (b), change the word "Example" to "Examples."

2) In the second example at the end of sub. (2) (c), add the words "by the advertising agency" at the end of the fourth sentence, after "are produced"; also renumber the example from 2 to 3 and add the following new examples:

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin.

Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary art, finished art and flyers, is subject to tax.

4) Assume the same facts as Example 3, except that 5 dubs are mailed by the advertising agency to radio stations outside Wisconsin.

Fifty percent of the entire charge by the advertising agency for the production of the master tape and dubs is subject to tax. The remaining 50% is not subject to tax because that portion of the sale took place outside Wisconsin.

3) In the example at the end of sub. (3) (j), change "an advertising agency" to "a Wisconsin advertising agency"; also, change the word "Example" to "Examples," number the example 1, and add the following new example:

2) Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished art.

The charge to Company I by the Wisconsin advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property, to Company I. The destined for sale requirement is not met and exemption from tax does not apply.

4) In the first note at the end of s. Tax 11.70, change the zip code from "53708" to "53708-8902."

5) Replace the second note at the end of s. Tax 11.70 with the following:

Note: Section Tax 11.70 interprets ss. 77.51 (14) (intro.) and (b) and (14r), 77.52 (1) and (2) and 77.54 (2), (2m), (6) (b), (25) and (43), Stats.

6) In the third note at the end of s. Tax 11.70, remove the word "and" before part (c) and add the following at the end of the note:

; and (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

This rule reflects the creation of a sales tax exemption for printed materials by 1997 Wis. Act 27. It also clarifies the exemption for sales to governmental units. It has no fiscal effect.

Notice of Proposed Rule Transportation

Notice is hereby given that pursuant to the authority of s. 343.32 (2) (bg), Stats., as amended by 1997 Wis. Act 84, and according to the procedure set forth in s. 227.16 (2) (b), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 101 as proposed in this notice without any public hearing unless, within 30 days after publication of this notice on **December 1, 1998**, it is petitioned

for a public hearing by 25 natural persons who will be affected by the rule, a municipality which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Questions about this rule may be addressed to John Alley, Department of Transportation, Division of Motor Vehicles, Bureau of Driver Services, Room 351, P. O. Box 7917, Madison, Wisconsin 53707-7917, telephone (608) 266-0614.

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: s. 343.32(2) (bg), Stats., as amended by 1997 Wis. Act 84, and made effective pursuant to s. 85.515, Stats., as created by 1997 Wis. Act 84 by publication of a notice in the Wis. Adm. Register on July 1, 1998.

Statutes interpreted: s. 343.32 (2) (bg), Stats., as amended by 1997 Wis. Act 84.

General Summary of Proposed Rule.

Section 58 of 1997 Wis. Act 84 requires the Department to assess three rather than six demerit points to drivers who are convicted of operating after suspension or revocation. This rule—making simply amends ch. Trans 101 to conform to this statutory requirement.

Fiscal Estimate

There is no fiscal effect from this regulatory change.

Initial Regulatory Flexibility Analysis

This regulatory change has no impact on small business.

Copies of Rule

Copies of the proposed rule can be obtained upon request, without cost, from the Division of Motor Vehicles, Bureau of Driver Services, P. O. Box 7917, Madison, WI 53707-7919. For further information contact John Alley at (608) 266-0614.

Text of Proposed Rule

Under the authority vested in the state of Wisconsin Department of Transportation by s. 343.32, Stats., as amended by 1997 Wis. Act 84, the Department of Transportation hereby proposes an order interpreting s. 343.32, Stats., relating to the assessment of demerit points for the traffic offenses of operating after revocation or suspension.

SECTION 1. Trans 101.02 (1) (c) is renumbered Trans 101.02 (3) (q).

Notice of Hearing

Veterans Affairs

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **11th day of December, 1998 at 9:30 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.**

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: s. 45.35 (3)

Statute interpreted: s. 45.351 (1j)

The amendment of s. VA 2.01 (2) (b)2. will enable the Department to expend additional funds for dentures under the health care aid grant program. The demand for dentures under the program is significant. The additional expenditure authority will permit the Department to expend \$300,000 during the fiscal year for dentures rather than the current limit of \$50,000. The \$300,000 maximum represents 25% of the program's current annual appropriation.

Initial Regulatory Flexibility Analysis

This rule is not expected to have an adverse impact on small businesses.

Fiscal Estimate & Contact Person

A copy of the proposed rules and the full fiscal estimate may be obtained by writing to:

John Rosinski
Wisconsin Department of Veterans Affairs
P.O. Box 7843
Madison, WI 53707-7843
(608) 266-7916

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Employe Trust Funds (CR 98-101):

An order creating s. ETF 50.48 (4) (c), relating to the administration of the Long-Term Disability Insurance (LTDI) program.

Effective 01-01-99.

Financial Institutions--Securities (CR 98-114):

An order affecting chs. DFI-Sec 2, 3 and 5 and ss. DFI-Sec 1.02, 7.01 and 9.01, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Effective 01-01-99.

Natural Resources (CR 98-24):

An order affecting chs. NR 10 and 11 and s. NR 15.02, relating to hunting and trapping.

Part effective 01-01-99.

Part effective 03-01-99.

Optometry Examining Board (CR 98-75):

An order affecting ch. Opt 3 and ss. Opt 4.01, 4.02, 4.03 and 6.03, relating to credential applications and examination requirements for individuals applying for a license to practice optometry.

Effective 01-01-99.

Revenue (CR 97-97):

An order affecting ss. Tax 19.01, 19.03, 19.04 and 19.05 and ch. Tax 19 (title), relating to tax rate disparity payments.

Effective 01-01-99.

Transportation (CR 98-102):

An order affecting s. Trans 157.05, relating to titling of vehicles held by trusts.

Effective 01-01-99.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the November 30, 1998 Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Commerce (CR 98-61):

An order creating ch. Comm 119, relating to the mining economic development grants and loans program.
Effective 12-01-98.

Commerce (CR 98-62):

An order affecting ch. Comm 106, relating to the Wisconsin Development Fund.
Effective 12-01-98.

Commerce (CR 98-63):

An order affecting ch. Comm 116, relating to the rural economic development program.
Effective 12-01-98.

Commerce (CR 98-64):

An order affecting ch. Comm 114, relating to the Wisconsin minority business finance program.
Effective 12-01-98.

Controlled Substances Board (CR 98-54):

An order creating s. CSB 2.24, relating to adding butorphanol to the classification of controlled substances in schedule IV of ch. 961, Stats., the Uniform Controlled Substances Act.
Effective 12-01-98.

Funeral Directors Examining Board (CR 98-57):

An order affecting chs. FD 1 to 5, relating to the practice of funeral directors.
Effective 12-01-98.

Health & Family Services (CR 98-69):

An order affecting ch. HFS 89, relating to residential care apartment complexes (formerly known as "assisted living facilities").
Effective 12-01-98.

Health & Family Services (CR 98-87):

An order amending s. HFS 196.03 (11r), relating to the exemption of food service operations providing "incidental food service" from being regulated as restaurants.
Effective 12-01-98.

Natural Resources (CR 95-223):

An order affecting chs. NR 518 and 718 and ss. NR 419.07, 500.03, 811.16 and 812.08, relating to the remediation of soil contamination through landspreading.
Part effective 12-01-98.

Natural Resources (CR 97-131):

An order affecting s. NR 485.04, relating to emission limitations for motor vehicles.
Effective 12-01-98.

Natural Resources (CR 98-44):

An order repealing and recreating ch. NR 8 and amending s. NR 45.12 (1), relating to implementation of the automated license issuance system.
Effective 01-01-99.

Workforce Development (CR 98-88):

An order amending s. DWD 80.60, relating to employer self-insurance under the worker's compensation program.
Effective 12-01-98.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in November, 1998, and will be effective December 1, 1998. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

REVISIONS

Commerce:

(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)

Ch. Comm 106

- S. Comm 106.40 (entire section)
- S. Comm 106.405 (entire section)
- S. Comm 106.41 (2m), (3), (5), (6), (8), (9) and (10m)
- S. Comm 106.42 (entire section)
- S. Comm 106.44 (2) (intro.)
- S. Comm 106.45 (entire section)
- S. Comm 106.46 (entire section)
- S. Comm 106.47 (entire section)
- S. Comm 106.48 (entire section)
- S. Comm 106.49 (entire section)
- S. Comm 106.50 (entire section)
- S. Comm 106.51 (entire section)
- S. Comm 106.60 (entire section)
- S. Comm 106.61 (2), (2m), (5), (6), (7), (11), (12), (14) and (15)
- S. Comm 106.62 (entire section)
- S. Comm 106.63 (entire section)
- S. Comm 106.64 (entire section)
- S. Comm 106.65 (entire section)
- S. Comm 106.66 (entire section)
- S. Comm 106.67 (entire section)
- S. Comm 106.68 (entire section)
- S. Comm 106.69 (entire section)
- S. Comm 106.70 (entire section)
- S. Comm 106.80 (entire section)
- S. Comm 106.81 (3), (4), (6), (8), (9), (10), (12), (13), (13m), (14) and (15)
- S. Comm 106.82 (entire section)
- S. Comm 106.825 (entire section)
- S. Comm 106.83 (entire section)
- S. Comm 106.84 (entire section)
- S. Comm 106.85 (entire section)
- S. Comm 106.86 (entire section)
- S. Comm 106.87 (entire section)
- S. Comm 106.88 (entire section)
- S. Comm 106.89 (entire section)
- S. Comm 106.90 (entire section)
- S. Comm 106.91 (entire section)
- S. Comm 106.92 (entire section)
- S. Comm 106.93 (entire section)
- S. Comm 106.94 (entire section)
- S. Comm 106.95 (entire section)

- S. Comm 106.96 (entire section)
- S. Comm 106.97 (entire section)
- S. Comm 106.98 (entire section)
- S. Comm 106.99 (entire section)

Ch. Comm 114

- S. Comm 114.01 (entire section)
- S. Comm 114.02 (1), (2), (2m), (5m), (6), (7m), (8), (9), (12) and (13m)
- S. Comm 114.03 (1m), (2), (2m) and (3)
- S. Comm 114.04 (1), (2) and (3)
- S. Comm 114.045 (entire section)
- S. Comm 114.05 (4m), (5) and (5m)
- S. Comm 114.055 (entire section)
- S. Comm 114.06 (entire section)
- S. Comm 114.07 (entire section)
- S. Comm 114.08 (entire section)
- S. Comm 114.09 (entire section)

Ch. Comm 116

- S. Comm 116.02 (1m), (2m), (3h), (3m) and (4)
- S. Comm 116.03 (entire section)
- S. Comm 116.035 (1), (2) and (3)
- S. Comm 116.037 (entire section)
- S. Comm 116.04 (entire section)
- S. Comm 116.05 (2), (3), (4) and (5)
- S. Comm 116.06 (entire section)
- S. Comm 116.07 (entire section)
- S. Comm 116.08 (entire section)
- S. Comm 116.09 (entire section)

Ch. Comm 119 (entire chapter)

Controlled Substances Board:

Ch. CSB 2

- S. CSB 2.24 (entire section)

Funeral Directors Examining Board:

Ch. FD 1

- S. FD 1.02 (entire section)
- S. FD 1.03 (entire section)
- S. FD 1.035 (entire section)
- S. FD 1.10 (1), (2) and (3)
- S. FD 1.11 (entire section)

Ch. FD 2

- S. FD 2.02 (1)
- S. FD 2.09 (entire section)
- S. FD 2.10 (2)
- S. FD 2.12 (entire section)

Ch. FD 3

S. FD 3.02 (4), (7), (11) and (13)

Ch. FD 4

S. FD 4.03 (7)

S. FD 4.04 (2) (intro.)

Ch. FD 5

S. FD 5.01 (entire section)

Health and Family Services:*(Community Services, Chs. HFS/HSS 30--)***Ch. HFS 89**

S. HFS 89.11 (entire section)

S. HFS 89.12 (entire section)

S. HFS 89.13 (30)

S. HFS 89.14 (entire section)

S. HFS 89.15 (entire section)

S. HFS 89.21 (entire section)

S. HFS 89.22 (entire section)

S. HFS 89.23 (entire section)

S. HFS 89.24 (entire section)

S. HFS 89.25 (entire section)

S. HFS 89.26 (entire section)

S. HFS 89.27 (entire section)

S. HFS 89.28 (entire section)

S. HFS 89.29 (entire section)

S. HFS 89.31 (entire section)

S. HFS 89.32 (entire section)

S. HFS 89.33 (entire section)

S. HFS 89.34 (entire section)

S. HFS 89.35 (entire section)

S. HFS 89.36 (entire section)

S. HFS 89.41 (entire section)

S. HFS 89.42 (entire section)

S. HFS 89.43 (entire section)

S. HFS 89.44 (entire section)

S. HFS 89.51 (entire section)

S. HFS 89.52 (entire section)

S. HFS 89.53 (entire section)

S. HFS 89.54 (entire section)

S. HFS 89.55 (entire section)

S. HFS 89.56 (entire section)

S. HFS 89.57 (entire section)

S. HFS 89.58 (entire section)

S. HFS 89.59 (entire section)

S. HFS 89.61 (entire section)

*(Health, Chs. HFS/HSS 110--)***Ch. HFS 196**

S. HFS 196.03 (11r)

Natural Resources:*(Fish, Game, etc., Chs. NR 1--)***Ch. NR 8 (entire chapter)****Ch. NR 45**

S. NR 45.12 (1) (a), (c) (intro.) and (d) (intro.)

*(Air Pollution Control, Chs. NR 400--)***Ch. NR 419**

S. NR 419.07 (4) (b) to (f)

Ch. NR 485

S. NR 485.04 Table 1 (3), (4), (5) and

Table 3 (1) (a) to (d), (2) (a) to (d) and
(3) (a) to (d)*(Solid Waste Management, Chs. NR 500--)***Ch. NR 518**

S. NR 518.04 (6m)

S. NR 518.05 (4) (f)

S. NR 518.09 (entire section)

Workforce Development:*(Worker's Compensation, Chs. DWD 80-82)*S. DWD 80.60 (2), (3) (b), (4) (a), (am), (b), (d),
(dm) and (dx)**EDITORIAL CORRECTIONS**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Health and Family Services:*(Health, Chs. HFS/HSS 110--)***Ch. HFS 110**

S. HFS 110.05 (5) (f)

Ch. HFS 196

S. HFS 196.15 (1) and (8) (a)

S. HFS 196.17 (5)

Natural Resources:*(Fish, Game, etc., Chs. NR 1--)***Chapter NR 8 had corrections made under s. 13.93
(2m) (b) 7., Stats.****Ch. NR 45**

S. NR 45.09 (2) and (4)

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Commerce (CR 98-61)

Ch. Comm 119 – Mining economic development grants and loan programs.

Summary of Final Regulatory Flexibility Analysis:

No additional costs have been identified by the department related to the adoption of these rules. No comments were received by small business during the development or the public hearings that the rules will have and impact on small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

2. Commerce (98-62)

Comm 106 – Wisconsin Development Fund.

Summary of Final Regulatory Flexibility Analysis:

No additional costs have been identified by the department related to the adoption of these rules. No comments were received by small business during the development or the public hearings that the rules will have and impact on small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

3. Commerce (CR 98-63)

Ch. Comm 116 – Rural Economic Development Program.

Summary of Final Regulatory Flexibility Analysis:

No additional costs have been identified by the department related to the adoption of these rules. No comments were received by small business during the development or the public hearings that the rules will have and impact on small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

4. Commerce (CR 98-64)

Ch. Comm 114 – Wisconsin Minority Business Finance Program.

Summary of Final Regulatory Flexibility Analysis:

No additional costs have been identified by the department related to the adoption of these rules. No comments were received by small business during the development or the public hearings that the rules will have and impact on small business.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Small Business and Economic Development and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

5. Controlled Substances Board (CR 98-54)

S. CSB 2.24 – Adding butorphanol to the classification of controlled substances in schedule IV of ch. 961, Stats., the Uniform Controlled Substances Act.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

6. Funeral Directors Examining Board (CR 98-57)

Chs. FD 1-5 –The practice of funeral directors.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

7. Health and Family Services (CR 98-69)

Ch. HFS 89 – Residential care apartment complexes (formerly known as assisted living facilities).

Summary of Final Regulatory Flexibility Analysis:

The rule changes will not affect residential care apartment complexes organized as small businesses, as “small business” is defined in s. 227.114 (1)(a), Stats. The changes do no more than bring the rules into conformity with changes made to s. 50.034, Stats., by 1997 Wis. Act 13. Act 13 changed the generic name of this type of facility from “assisted living facility” to “residential care apartment complex” and created a definition for “stove” which superseded the definition of “stove” in the original rules.

Summary of Comments:

No comments were reported.

8. Health and Family Services (CR 98-87)

S. HFS 196.03 (11r) – Exemption of food service operations providing “incidental food service” from being regulated as restaurants.

Summary of Final Regulatory Flexibility Analysis:

This rule change gives regulatory relief to as many as 2100 grocery stores in the state, about one-third of which are small businesses as “small business” is defined in s. 227.114 (1)(a), Stats.

The affected grocery stores are licensed as retail food establishments by the Department of Agriculture, Trade and Consumer Protection (DATCP) or one of its agent local health department and offer meals for sale to the general public within the retail food establishment, the sale of which amounts to more than 25% but less than 50% of the gross annual food sales of a store. Those stores have consequently been required to also have a restaurant permit issued by the Department of Health and Family Services or one of its agent local health departments.

The effect of the change in the definition of “incidental food service” is that these retail food establishments will no longer be required to have a separate restaurant permit, pay an annual restaurant permit fee or be inspected for compliance with the Department’s rules for restaurants.

Summary of Comments of Legislative Standing Committees:

No comments were received.

9. Natural Resources (CR 98-44)

Ch. NR 8 & S. NR 45.12 – Implementation of the automated license issuance system.

Summary of Final Regulatory Flexibility Analysis:

The only businesses affected by this rule are those who wish to become license sales agents for the Department of Natural Resources. The automated license issuance system will significantly simplify the current compliance and reporting requirements.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

10. Natural Resources (CR 95-223)

Chs. NR 419, 500, 518 & 718 – Remediation of soil contamination through landspreading.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not create additional regulatory or compliance requirements beyond the existing scope of the NR 700 series. With the exception of increased competition among soil remediation service providers, there are no small business impacts that result from this rule. The rule is intended to maintain a single point of contract, thus streamlining the cleanup process and, in some cases, providing a more cost effective remedy for businesses of all sizes that find themselves responsible for the remediation of petroleum contamination.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. There were no recommendations made as a result of the public hearing.

11. Natural Resources (CR 97-131)

Ch. NR 485 – Emission limitations for motor vehicles.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not have a significant economic impact on a substantial number of small businesses. Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicles owners are affected.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Environment Committee and the Senate Environment and Energy Committee. There were no comments.

12. Workforce Development (CR 98-88)

S. DWD 80.60 – Self-Insurance.

Summary of Final Regulatory Flexibility Analysis:

Self-insured employers are, by definition, large employers with significant numbers of employees. Small businesses are not required to file anything. Self-insurance is voluntary.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs. No comments were received.

EXECUTIVE ORDER

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 356. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Memory of the Late Peter A. Larsen of the Beloit Police Department.

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